

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Accelerating Wireline Broadband)	WC Docket No. 17-84
Deployment by Removing Barriers)	
to Infrastructure Investment)	

To the Commission:

REPLY COMMENTS OF ILLINOIS ELECTRIC COOPERATIVE

Illinois Electric Cooperative (“IEC”) hereby submits these reply comments in response to the Federal Communications Commission’s (“FCC”) Notice of Proposed Rulemaking, Notice of Inquiry, and Request for Comment, adopted April 20, 2017, and released April 21, 2017, concerning the acceleration of wireline broadband deployment. Specifically, IEC replies to the comments of the DuPage Mayors and Managers Conference (“Conference”), responds to the Paper provided with the July 10, 2017 Notice of Ex Parte of Deloitte and Touche LLP U.S. (“Deloitte”), and addresses general comments regarding the FCC’s preemption authority. As a reminder, underlying the concerns expressed in IEC’s comments dated June 9, 2017 is the fact that areas of its service territory are devoid of any public right-of-way (“ROW”) upon which it could construct a fiber network. In these reply comments, IEC questions the Conference’s support of Illinois ROW treatment, contends that IEC’s rural fiber-to-the-premises and wireless backhaul network fits the characterizations made by Deloitte in its analyses and

conclusions regarding “deep fiber,” and illustrates the need for the FCC to exercise its preemption authority.

RURAL MUNICIPALITIES STAND TO BENEFIT FROM PREEMPTION OF STATE AND COUNTY REGULATION

IEC recognizes that there are demographic differences between itself and the municipalities represented by the Conference. However, many of the benefits of a deep fiber broadband infrastructure apply to the municipalities and unincorporated areas of Illinois as well as those represented by the Conference. IEC agrees with the FCC’s assertions regarding the increasing importance and benefits associated with access to high-speed broadband. The impact upon municipalities is clearly evident based on first-hand experience and testimonials of those in the health, education, and economic arenas. Public safety, school districts, businesses, and homes already receiving IEC’s broadband service have benefitted. Calhoun County residents, however, continue to be unduly denied the benefits of broadband due to Illinois policy supported by the Conference. (Conference Comments p.2) Attached as Exhibits A through F are testimonials from Calhoun County residents and leaders expressing support for broadband deployment. IEC’s primary points in response to the Conference are as follows:

- IEC’s experience contrasts with the characterization of Illinois ROW as a “public trust” that is able to be beneficially administered by counties and municipalities. (Conference Comments p.2.)

- IEC’s proposed deep fiber network would provide the benefits, and warrants the treatment presented in the Deloitte Paper (*Communications infrastructure upgrade, The need for deep fiber*, published July 2017)

- general comments opposing preemption fail to recognize direct conflicts and contradictions between ROW (or the lack thereof) and state and national broadband policy.

Municipalities in Calhoun County, Illinois are effectively islands amidst a public ROW vacuum, leaving them cut-off from access to high-speed / broadband internet infrastructure.

In IEC's discussions with the President of the Village of Hardin, which is the county seat of Calhoun County, IL, the President has shared that he and the Village leaders are in full support of IEC's efforts to bring deep fiber infrastructure to Calhoun County. The President further indicated that he understands how this could greatly improve the quality of life in the County, but recognizes the major obstacle to overcome is barriers associated with ROW, or more specifically the lack of ROW outside of municipalities. IEC has found that the President's perspective is mirrored by local officials in the community who lament the current ROW situation but don't know what they can do about it. IEC economic development outreach has shown that residents without the in-depth knowledge of the barriers presented by the lack of ROW are often frustrated by the apparent lack of common sense when they observe existing electric utility poles upon which fiber could easily be added.

Local and regional economic development officials witness the economic encumbrances due to lack of modern broadband infrastructure in Calhoun County, Illinois.

The litany of common encumbrances reported by local and regional economic development officials include problems with credit card transactions, marketing and promotion, and home-based business data transmission. Additionally, one of the most frequently reported concerns is the lack of wireless capacity. Cell reception is poor in the

County due to the lack of fiber backhaul capacity and tower density, which, as noted in IEC's comments, is related to the incompatible topography of Calhoun County. (IEC Comments p.6) On this point, IEC agrees with the analysis and conclusions supporting Deloitte's assertion in its Paper that "Fiber is the centerpiece of wireless advancement." (Deloitte Paper pp. 9-11) Across all barrier issues, both community leaders and residents find it remarkable that a St. Louis Metro County lacks essential fiber infrastructure. IEC concurs with Deloitte to the degree that this rural area continues to fall farther behind metropolitan neighbors due to lack of fiber infrastructure investment. (Deloitte Paper p.12)

Public safety, schools, and health care suffer from lack of modern broadband infrastructure in Calhoun County, Illinois.

While the Conference cites public safety and health as a reason to justify state and local barriers to broadband infrastructure, IEC regards these barriers as impairments to public safety and health. (Conference Comments p.2) The Calhoun County Sheriff and the County Board Chairman have both indicated that access to reliable broadband would improve the quality and reliability of public safety communication networks for the County.

Local health care providers in Calhoun County lack reliable broadband that could allow them to offer new and improved care through telehealth and telemedicine offerings. Deep fiber deployment which would include health care connectivity between the health care provider and patient homes could benefit the health and welfare of the rural community. IEC agrees that the benefits would accrue as they would for other business and home applications as described by Deloitte. (Deloitte Paper p.10)

Local schools in Calhoun County require fast and reliable broadband in order to incorporate more web based learning initiatives in school through smart boards and

iPads. Adequate residential service could help ensure that students would be able to access the web at home for homework and research purposes.

NATIONAL, STATE, AND LOCAL POLICY SHOULD CONSISTENTLY SUPPORT THE BENEFITS OF BROADBAND INFRASTRUCTURE DEPLOYMENT

While the Conference asserts that ROW in Illinois is a matter of public trust and should therefore be left alone by the FCC, it does not address situations where public ROW does not exist. Limited preemption of state eminent domain laws and any other state and county regulations regarding land use could address areas where public ROW does not exist. Tailored preemption under Section 253 of the Telecommunications Act of 1996 (“TA96”), 47 U.S.C. 151 et seq., could remedy the situation and facilitate fiber and broadband deployment efforts that are consistent with not only federal policy, but also state and county policies. Illinois’ own telecommunications policy, as reflected in Sections 13-102 and 13-103 of the Public Utilities Act, 220 ILCS 5/1-101 et seq., supports the availability of telecommunications services to all Illinois citizens at just, reasonable, and affordable rates as widely and economically as possible in sufficient variety, quality, quantity, and reliability to satisfy the public interest. Unfortunately, Illinois’ own Eminent Domain Act, 735 ILCS 30/1-1-1 et seq., thwarts that policy when it comes to the need for easements to deploy a fiber optic network where no public ROW exists. IEC contends that this issue is important not only for Calhoun County, but for other areas of the United States where IEC suspects a similar lack of ROW hampers fiber and broadband deployment. Commenters contending that FCC preemption is not authorized or necessary overlook such policy contradictions that could be reconciled under Section 253 of TA96.

Some parties opposing preemption by the FCC cite Section 253(c) of TA96 in support of their position. (See Comments of the League of Minnesota Cities, pp.8-9, filed June 13, 2017.) Section 253(c) reads in its entirety as:

(c) State and local government authority

Nothing in this section affects the authority of a State or local government to manage the *public rights-of-way* or to require fair and reasonable compensation from telecommunications providers, on a competitively neutral and nondiscriminatory basis, for use of *public rights-of-way* on a nondiscriminatory basis, if the compensation required is publicly disclosed by such government. (emphasis added)

The problem with applying Section 253(c) in the context of IEC's concern is that in the unincorporated areas of Calhoun County there is no public ROW over which Illinois or a local government can have authority. The state statute impeding the deployment of fiber and broadband telecommunications services is not specific to the ROW. As explained in IEC's own June 9, 2017 comments, having to resort to condemning easements simply to hang fiber on existing poles where no public ROW exists introduces significant uncertainty to a deployment project, so much so that it may jeopardize a carrier's ability to proceed.

The preemption that IEC proposes in its comments is analogous to the cap on cable operator franchise fees provided for in 47 U.S.C. 542. (See IEC Comments, p.7) A cap on the franchise fee paid by a cable operator limits income of the recipient of that fee, which may be considered by some to be a taking. A federal rule promulgated under the authority of Section 253(d) that limits or caps the value assessment on an easement allowing the hanging of fiber on existing poles could similarly be considered a taking by some commenters. Because the former is clearly permissible, there is no reason that the FCC should not require the latter by preempting state condemnation statutes when the only property interest impacted relates to the nominal burden of hanging fiber on existing

electric distribution poles where no public ROW exists. IEC is hopeful that the Conference and other commenters opposing preemption will recognize how preemption under the limited circumstances outlined by IEC actually fills a void that otherwise frustrates fiber and broadband deployment efforts. To the extent that the FCC may wish to employ preemption more broadly, IEC defers to the FCC's judgement.

IEC notes as well that a lack of access to poles and conduit is among the issues listed by Deloitte as impediments to fiber investment. (Deloitte Paper p.20) Although Deloitte raises this concern in the context of the delay associated with technicians moving existing cables, the fact remains that a lack of access to poles hinders broadband deployment. This hindrance could be removed utilizing the limited preemption IEC proposes.

IEC continues to strongly urge the FCC to employ its authority under Section 253(d) of TA96 to preempt the value-setting provisions in existing state condemnation statutes to facilitate the deployment of broadband. (IEC Comments p.10)

CONCLUSION

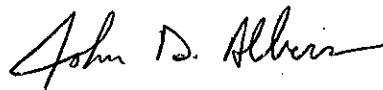
Consistent with its first round of comments to this Inquiry, IEC respectfully reaffirms its request that the FCC consider using preemption. Such preemption should be applied to remove the service delays and uncertainty regarding the value that state courts may assign to nominal impact easements (e.g., an easement allowing fiber to be hung from existing utility poles.) (IEC Comments p.10) By removing such barriers, the FCC would make an important step in accelerating wireline broadband infrastructure deployment.

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Respectfully Submitted,



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